



Billing Code 3720-58

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 334

East Bay, St. Andrews Bay and the Gulf of Mexico at Tyndall Air Force Base, Florida;
Restricted Areas.

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The U.S. Army Corps of Engineers (Corps) is proposing to amend its regulations by revising an existing restricted area regulation and establishing six new restricted areas along the Tyndall Air Force Base (AFB) facility shoreline. Tyndall AFB is surrounded on three sides by water with approximately 129 miles of unprotected coastline. This includes several areas where the lack of security or lack of restriction on access to these areas leaves Tyndall AFB personnel and resources vulnerable to unauthorized activities. This amendment is necessary to implement an enhanced security plan for Tyndall AFB, which includes four new permanent restricted areas and the ability to activate two additional restricted areas as local and national intelligence threat evaluations dictate.

DATES: Written comments must be submitted on or before [INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by docket number COE-2013-0003, by any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov> . Follow the instructions for submitting comments.

E-mail: david.b.olson@usace.army.mil . Include the docket number, COE-2013-0003, in the subject line of the message.

Mail: U.S. Army Corps of Engineers, Attn: CECW-CO (David B. Olson), 441 G Street NW, Washington, DC 20314-1000.

Hand Delivery / Courier: Due to security requirements, we cannot receive comments by hand delivery or courier.

Instructions: Direct your comments to docket number COE-2013-0003. All comments received will be included in the public docket without change and may be made available on-line at <http://www.regulations.gov> , including any personal information provided, unless the commenter indicates that the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI, or otherwise protected, through regulations.gov or e-mail. The regulations.gov web site is an anonymous access system, which means we will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail directly to the Corps without going through regulations.gov, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, we recommend that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If we cannot read your comment because of technical difficulties and cannot contact you for clarification, we

may not be able to consider your comment. Electronic comments should avoid the use of any special characters, any form of encryption, and be free of any defects or viruses.

Docket: For access to the docket to read background documents or comments received, go to www.regulations.gov . All documents in the docket are listed. Although listed in the index, some information is not publicly available, such as CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form.

FOR FURTHER INFORMATION CONTACT: Mr. David Olson, Headquarters, Operations and Regulatory Community of Practice, Washington, D.C. at 202-761-4922 or Mr. Jon M. Griffin, U.S. Army Corps of Engineers, Jacksonville District, Regulatory Division, at 904-232-1680.

SUPPLEMENTARY INFORMATION:

Executive Summary

The purpose of this regulatory action is to establish four new permanent restricted areas in the waters surrounding Tyndall AFB to counter postulated threats against their personnel and equipment at those sites. Additionally, this regulatory action would establish two additional restricted areas which would be activated under conditions of heightened security risks and provide an administrative correction to the existing regulation at 33 CFR 334.660.

The Corps authority to establish these restricted areas is Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat. 892; 33 U.S.C. 3).

Background

Pursuant to its authorities in Section 7 of the Rivers and Harbors Act of 1917 (40 Stat 266; 33 U.S.C. 1) and Chapter XIX of the Army Appropriations Act of 1919 (40 Stat 892; 33 U.S.C. 3) the Corps is proposing to revise the regulations at 33 CFR part 334 by establishing a total of six new restricted areas in the waters surrounding Tyndall AFB. This amendment to the existing regulation will allow the Commander, Tyndall AFB to restrict the passage of persons, watercraft, and vessels in waters contiguous to this facility thereby providing greater security for personnel and equipment. The administrative correction at 33 CFR 334.660(b)(3) will clarify who is responsible for enforcing the provisions of § 334.660.

Procedural Requirements

a. Review Under Executive Order 12866. The proposed rule is issued with respect to a military function of the Department of Defense and the provisions of Executive Order 12866 do not apply.

b. Review Under the Regulatory Flexibility Act. The proposed rule has been reviewed under the Regulatory Flexibility Act (Public Law 96-354) which requires the preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities (i.e., small businesses and small governments). Unless information is obtained to the contrary during the comment period, the Corps expects that the proposed rule would have practically no economic impact on the public, or result in no anticipated navigational hazard or interference with existing waterway traffic. This proposed rule, if adopted, will have no significant economic impact on small entities.

c. Review Under the National Environmental Policy Act. Due to the administrative nature of this action and because there is no intended change in the use of the area, the Corps expects that this regulation, if adopted, will not have a significant impact on the quality of the human environment and, therefore, preparation of an environmental impact statement will not be required. An environmental assessment will be prepared after the public notice period is closed and all comments have been received and considered.

d. Unfunded Mandates Act. This proposed rule does not contain a Federal mandate that may result in expenditures of \$100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Therefore, this proposed rule is not subject to the requirements of Sections 202 and 205 of the Unfunded Mandates Reform Act (UMRA). The proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, the proposed rule is not subject to the requirements of Section 203 of UMRA.

List of Subjects in 33 CFR Part 334

Danger zones, Navigation (water), Restricted areas, Waterways.

For the reasons set out in the preamble, the Corps proposes to amend 33 CFR part 334 as follows:

PART 334 – DANGER ZONE AND RESTRICTED AREA REGULATIONS

1. The authority citation for part 334 continues to read as follows:

Authority: 40 Stat. 266 (33 U.S.C. 1) and 40 Stat. 892 (33 U.S.C. 3).

2. In § 334.660, revise paragraph (b)(3) to read as follows:

§ 334.660 Gulf of Mexico and Apalachicola Bay south of Apalachicola, Fla., Drone Recovery Area, Tyndall Air Force Base, Fla.

* * * * *

(b) * * *

(3) The regulations in this section shall be enforced by the Installation Commander, Tyndall Air Force Base, Florida, and such other agencies as he/she may designate.

3. Add § 334.665 to read as follows:

§ 334.665 East Bay, St. Andrews Bay and the Gulf of Mexico, Restricted Areas, Tyndall Air Force Base, (AFB), Fla.

(a) *The areas.* (1) The coordinates provided herein are approximations obtained using a commercial mapping program which utilizes Simple Cylindrical projection with a WGS84 datum for its imagery base and imagery dated January 1, 2012.

(2) The areas described in paragraphs (a)(3)(i) through (iv) of this section will have restricted access on a permanent basis while the areas described in paragraphs (a)(4)(iii) and (iv) of this section will be activated when the need for heightened security measures is anticipated.

(3) *Permanent Restricted Areas.* (i) *Military Point.* The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°07'23.23" N, 85°37'36.91" W thence directly to 30°07'27.97" N, 85°37'38.45" W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to

30°07'17.91" N, 85°37'04.04" W thence proceeding directly to the mean high water line at approximately 30°07'19.02" N, 85°37'09.60" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(ii) *Fred Bayou/Fuels Area*. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°05'46.02" N, 85°35'20.33" W thence directly to 30°05'49.40" N, 85°35'20.49" W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°05'42.05" N, 85°34'20.40" W thence proceeding directly to the mean high water line at approximately 30°05'37.14" N, 85°34'21.20" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(iii) *Little Cedar Bayou/Flight Line*. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°04'59.40" N, 85°33'29.12" W thence directly to 30°05'03.65" N, 85°33'26.21" W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°05'00.63" N, 85°33'23.58" W thence continuing in a westerly direction maintaining a standoff distance of 500 feet from the mean high water line to 30°04'59.82" N, 85°33'18.40" W thence proceeding directly to the mean high water line at approximately 30°04'55.88" N, 85°33'21.79" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(iv) *Silverflag/Baker Bayou*. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°01'23.75" N, 85°29'04.94" W thence directly to 30°01'26.71" N, 85°29'00.37" W, the line then meanders irregularly following the shoreline at a distance of 500 feet waterward from the mean high water line to 30°01'23.95" N, 85°29'00.09" W thence continuing in a westerly direction maintaining a standoff distance of 500 feet from the mean high water line to 30°01'22.35" N, 85°28'54.04" W thence proceeding directly to the mean high water line at approximately 30°01'20.13" N, 85°29'02.21" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(4) *Enhanced Security Restricted Areas*. (i) Portions of the restricted areas described in paragraphs (a)(4)(iii) and (iv) of this section include barrier islands. Because of the dynamic nature of these geographic features the coordinate points provided may not reflect the current situation regarding the location of a point at the mean high water line or 500 feet waterward of the mean high water line. Even if the landform has shifted, the intent of the area description will be enforced from the existing point at the mean high water line that is closest to that provided herein out to a point located 500 feet waterward of the mean high water line.

(ii) The regulations for the Enhanced Security Restricted Areas described in paragraphs (a)(4)(iii) and (iv) of this section will include the use of the term "Military Security Buffer." For the purposes of this regulation a Military Security Buffer is considered to be a 500 foot wide buffer area surrounding any United States owned or

operated vessel anchoring or mooring within the active Enhanced Security Restricted Area.

(iii) *St. Andrew Bay and East Bay.* Unless otherwise noted, the boundary for the area described herein is determined by a line paralleling the shoreline at a distance of 500 feet waterward of the mean high water line which connects the coordinate points provided. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 30°05'30.53" N, 85°40'39.00" W thence directly to 30°05'35.44" N, 85°40'39.64" W, thence to 30°04'09.10" N, 85°37'07.06" W thence directly to 30°04'13.17" N, 85°36'55.97" W thence to 30°08'00.33" N, 85°39'50.96" W thence to 30°06'09.36" N, 85°36'54.80" W thence to 30°03'33.50" N, 85°32'10.43" W thence to 30°02'17.86" N, 85°30'24.92" W thence directly to 30°02'11.97" N, 85°30'23.13" W thence to 30°01'55.71" N, 85°29'51.28" W thence to 30°01'00.38" N, 85°27'59.87" W thence to 30°01'13.92" N, 85°26'54.47" W thence proceeding directly to the mean high water line at approximately 30°01'09.00" N, 85°26'55.00" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(iv) *Gulf of Mexico and St. Andrew Sound.* Unless otherwise noted, the boundary for the area described herein is determined by a line paralleling the shoreline at a distance of 500 feet waterward of the mean high water line which connects the coordinate points provided. The restricted area shall encompass all navigable waters of the United States as defined at 33 CFR part 329 within the area bounded by a line connecting the following coordinates: Commencing from the mean high water line at approximately 29°57'13.00"

N, 85°26'42.00" W thence directly to 29°57'08.00" N, 85°26'42.00" W, thence to 29°57'56.43" N, 85°28'29.36" W thence to 29°59'02.13" N, 85°30'05.21" W thence directly to 29°59'09.05" N, 85°30'10.25" W thence to 30°03'07.93" N, 85°35'01.75" W thence to 30°05'13.12" N, 85°40'40.00" W thence proceeding directly to the mean high water line at approximately 30°05'18.00" N, 85°40'39.00" W. The area also includes all contiguous inland navigable waters which lie within the land boundaries of Tyndall AFB.

(b) *The regulations.* (1) *Permanent Restricted Areas.* (i) For the areas identified in paragraphs (a)(3)(i) through (iv) of this section, all persons, vessels and craft, including pleasure vessels and crafts (sailing, motorized, and/or rowed/towed or otherwise self-propelled), private and commercial fishing vessels, other commercial vessels, barges and all other vessels and craft, except vessels owned, operated or contracted by the United States and/or a Federal, State, or local law enforcement agency, are restricted from transiting, anchoring, trawling, dredging, drifting or attaching any object to the submerged sea-bottom within the above described Permanent Restricted Areas.

(ii) The Permanent Restricted Areas identified in paragraphs (a)(3)(i) through (iv) of this section are in effect 24 hours a day, 7 days a week.

(2) *Enhanced Security Restricted Areas.* (i) For the areas identified in paragraphs (a)(4)(iii) and (iv) of this section, a 500-foot Military Security Buffer is automatically placed around any vessel, owned or operated by the United States, which is anchored or moored within an active Enhanced Security Restricted Area. The Military Security Buffer will extend the Enhanced Security Restricted Area beyond the perimeter boundary limits described in paragraphs (a)(4)(iii) and (iv) of this section for as long as the Enhanced Security Restricted Area is active and the vessel is anchored or moored.

(ii) During times of heightened security threats against Tyndall AFB all persons, vessels and craft, including pleasure vessels and crafts (sailing, motorized, and/or rowed/towed or otherwise self-propelled), private and commercial fishing vessels, other commercial vessels, barges and all other vessels and craft, except vessels owned, operated or contracted by the United States and/or a Federal, State, or local law enforcement agency, are restricted from transiting, anchoring, trawling, dredging, drifting or attaching any object to the submerged sea-bottom within the above described Enhanced Security Restricted Areas or the 500-foot Military Security Buffer established around any United States owned or operated vessel when it is anchored or moored within the active Enhanced Security Restricted Area.

(iii) Due to the nature of these Enhanced Security Restricted Areas, closures may occur with little advance notice. Enhanced Security Restricted Areas will be activated based on local and national intelligence information related to threats against military installations and/or resources common to Tyndall AFB in concert with evaluations conducted by Tyndall AFB Threat Working Group and upon direction of the Installation Commander, Tyndall AFB. Public notification of Enhanced Security Restricted Area activation will be made via marine VHF broadcasts (channels 13 and 16), local notice to mariners, local news media through Air Force Public Affairs notifications and on-scene oral notifications.

(c) *Enforcement.* The regulations in this section shall be enforced by the Installation Commander, Tyndall AFB and/or such persons or agencies as he/she may designate. Military vessels may patrol the areas identified in paragraph (a) of this section at any time, 24 hours a day, 7 days a week. Any person or vessel encroaching within the

permanent restricted areas or active Enhanced Security Restricted Areas identified in paragraph (a) of this section will be asked to immediately leave the area. Failure to do so may result in the issuance of a citation and/or the forceful removal of the person or vessel from the area in question.

DATE May 3, 2013

APPROVED_____

James R. Hannon

Chief, Operations and Regulatory

Directorate of Civil Works

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